

ASSEMBLY BILL

No. 850

Introduced by Assembly Member Canciamilla
(Principal coauthor: Assembly Member Benoit)
(Principal coauthor: Senator Runner)

February 18, 2005

An act to amend Section 143 of the Streets and Highways Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

AB 850, as introduced, Canciamilla. Toll road agreements.

Existing law, until January 1, 2003, authorized the Department of Transportation to solicit proposals and enter into agreements with private entities or consortia for the construction and lease of no more than 2 toll road projects, and specified the terms and requirements applicable to those projects.

This bill would instead authorize the department to enter into comprehensive development franchise agreements with public and private entities or consortia for specified types of transportation projects, as defined, subject to certain requirements and conditions. The bill would authorize tolls to be collected after the termination of a franchise agreement period, subject to approval of the California Transportation Commission. The bill would require a franchise agreement to allow the department to acquire by condemnation or negotiation the financial value of a competing toll facility if the department opens a competitive state facility in the same corridor. The bill would enact other related provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 143 of the Streets and Highways Code is amended to read:

143. (a) ~~The Pursuant to Chapter 3 (commencing with Section 30800) of Division 17, the department may solicit proposals, negotiate, and enter into comprehensive development franchise agreements with public and private entities, or consortia thereof, for the construction by, and lease to, private entities of two public transportation demonstration projects. The department shall not enter into an agreement for any new proposals under this authority after January 1, 2003.~~ *As used in this section, "transportation projects" means (1) shared high-occupancy vehicle (HOV) lanes where HOVs are permitted free passage, (2) dedicated exclusive truck lanes, (3) mixed-flow toll lanes and free lanes, and (4) toll lanes for all vehicles other than HOVs.*

(b) For the purpose of facilitating those transportation projects, the agreements *between the parties* may include provisions for *limiting the department from initiating the opening to traffic of new competing state highway facilities within the same transportation corridor*, for the lease of rights-of-way in, and airspace over or under, *these* state highways, for the granting of necessary easements, and for the issuance of permits or other authorizations to enable ~~the private entity to construct the construction of~~ transportation facilities supplemental to existing state-owned *and operated* transportation facilities. Facilities constructed by ~~a private~~ *an* entity pursuant to *an agreement* under this section shall, at all times, be owned by the ~~state~~ *department as an operational part of the state highway system.* The agreement shall provide for the lease of those facilities to the ~~private franchised~~ entity for up to 35 years *to recover private investments in the form of expended funds together with a reasonable rate of return on those funds, negotiated by the department with the contracting entity.* In consideration therefor, the agreement shall provide for complete reversion of the privately constructed facility *and the right to collect tolls* to the ~~state department and any other government entity participating in the funding of the project, if any,~~ at the expiration of the lease at no charge to the ~~state~~ *department or other governmental entity.*

(c) The department may exercise any power possessed by it with respect to the development and construction of state transportation projects to facilitate the development and construction of transportation *toll* projects *initiated* pursuant to this section. Agreements for maintenance and police services entered into pursuant to this section ~~shall~~ *may* provide for ~~full~~ *some form of negotiated* reimbursement for services rendered by the department ~~or~~ *and* other state agencies. The department may provide services for which it is reimbursed with respect to preliminary planning, environmental certification *and review*, ~~and~~ preliminary design, *design, right-of-way acquisition, and construction of the demonstration* these transportation projects.

(d) (1) Agreements entered into pursuant to this section shall authorize the ~~private~~ *contracting* entity to impose tolls for use of a facility constructed by it, and shall require that over the term of the ~~lease franchise~~, *that* the toll revenues *will* be applied to payment of *some or all of the* ~~private entity's~~ capital outlay costs for the project, the costs associated with operations, toll collection, administration of the facility, reimbursement to the ~~state department or other governmental entity~~ for the costs of ~~maintenance and services to develop and maintain the project~~, police services, and a reasonable return on investment to the private entity. The agreement shall require that any excess toll revenue either be applied to any indebtedness incurred by the private entity with respect to the project or be paid into the State Highway Account, or both.

(2) The ~~authority to collect~~ *collection of* tolls for the use of these facilities ~~shall terminate~~ *may be extended by the commission* at the expiration of the franchise agreement.

(e) The plans and specifications for each *transportation* project constructed pursuant to this section shall comply with the department's *then-existing* standards for *similar* state transportation projects. A facility constructed by and leased to ~~a private~~ *another* entity shall, during the term of the lease, be deemed to be a part of the state highway system for purposes of identification, maintenance, enforcement of traffic laws, and for the purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

1 (f) The assignment authorized by subdivision (c) of Section
2 130240 of the Public Utilities Code is consistent with this
3 section.

4 (g) *Each franchise agreement entered into by the department*
5 *shall include provisions authorizing the department to open*
6 *competitive facilities to traffic within the designated corridor*
7 *subject to the department exercising its police power to either*
8 *acquire by condemnation or negotiation the remaining net fair*
9 *market capitalized value of the toll franchise period equivalent to*
10 *the projected lost annual income for the remaining term of the*
11 *competition protection afforded by that agreement. The annual*
12 *payments shall be determined by a projection of the average*
13 *increase of net income over the previous five years of tolled*
14 *operations, or less than five years if there have not been a full*
15 *five years of consecutive operations of the facility. To the extent*
16 *that the toll facility does not suffer a loss of net income*
17 *equivalent to that projected in each year, the sum paid at the end*
18 *of that fiscal year on June 30 shall be adjusted so that the*
19 *department's payments are reduced accordingly.*